

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Oct 11, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEREMY JAY GULLETT,

Defendant.

No. 4:19-CR-06017-SAB

**ORDER DENYING MOTION TO  
SUPPRESS**

Before the Court is Defendant's Motion to Suppress, ECF No. 26. The Court held a hearing on the motion on October 4, 2019 in Yakima, Washington. Benjamin Seal appeared on behalf of the Government, and Paul Shelton appeared on behalf of Defendant, who was present in the courtroom. At the hearing, both the Government and Defendant presented live testimony. ECF No. 44. The Court took the matter under advisement. *Id.* Having reviewed the record, applicable case law, and submissions of the parties, the Court **DENIES** Defendant's Motion to Suppress.

**Procedural Background**

On March 19, 2019, the Government filed a two-count Indictment charging Defendant with (1) possession with the intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii) and (2) being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). ECF No. 1 at 1-2. The Government filed a Motion for Writ of Habeas Corpus Ad Prosequendum, which Magistrate Judge Mary K. Dimke granted on

1 May 9, 2019. ECF Nos. 7, 8. A jury trial was scheduled for July 15, 2019, before  
2 Judge Salvador Mendoza, Jr., in Richland, Washington, and was later continued to  
3 October 28, 2019. ECF Nos. 20, 24. On September 4, 2019, Judge Mendoza  
4 recused himself from the case and it was reassigned to this Court. ECF Nos. 28, 29.  
5 Defendant filed the instant motion to suppress on August 26, 2019. ECF No. 26. In  
6 his motion, Defendant argues that evidence seized from a Saturn Ion following his  
7 arrest on a valid arrest warrant must be suppressed because the officers who  
8 stopped him lacked probable cause to do so. *See generally* ECF No. 26.

### 9 **Factual Background<sup>1</sup>**

10 Police arrested Defendant Jeremey Gullett just after midnight on February  
11 22, 2019, in a Motel 6 parking lot located in Kennewick, Washington. Sometime  
12 prior to February 22, Kennewick Police Department Detectives Keith Schwartz  
13 and Elizabeth Grant received anonymous tips from two individuals that Defendant  
14 was involved in dealing narcotics and had been staying at motels in the Tri-Cities  
15 area. Detective Grant also learned from the manager of another motel in  
16 Kennewick that Defendant was driving a Saturn Ion. Detectives Schwartz and  
17 Grant are members of KPD's Criminal Apprehension Team (CAT); as members of  
18 the CAT, the Detectives search for individuals with active warrants for their  
19 arrests. Defendant had an active warrant for his arrest out of Franklin County.  
20 Based on the warrant and anonymous tips, Detectives Schwartz and Grant began  
21 patrolling parking lots at motels to find Defendant.

22 On February 22, 2019, Defendant was sitting in a Saturn Ion in the parking  
23 lot of Motel 6 in Kennewick, Washington, with a passenger in the front seat. The  
24 car was not turned on and the lights inside the car were turned off. Detectives  
25 Schwartz and Grant had previously arrested Defendant and knew him by sight  
26

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27 <sup>1</sup> Unless otherwise indicated, all facts are pulled from the Kennewick Police  
28 Department incident reports attached as exhibits to both the Government and  
Defendant's motions.

1 based on those experiences. Detectives drove through the Motel 6 parking lot  
2 shortly after midnight in an unmarked patrol vehicle, wearing department-issued  
3 CAT uniforms that identified them as police. As they were driving through the lot,  
4 Detectives observed the Saturn Ion and approached the vehicle to investigate  
5 whether Defendant was the driver. Detectives positively identified Defendant,  
6 turned on the emergency lights on their vehicle, and contacted Defendant.  
7 Detectives advised Defendant he was under arrest based on the warrant for his  
8 arrest from Franklin County and detained him without incident. A search incident  
9 to this arrest was conducted, and Detective Schwartz located a large amount of  
10 cash in his jacket pocket.

11 After being notified of his *Miranda* rights, Defendant waived his rights and  
12 agreed to speak with law enforcement. Defendant told Detective Schwartz that he  
13 was not dealing narcotics, but that there was a new glass pipe in the vehicle that he  
14 intended to use as a meth pipe. At 12:29 a.m., Detective Schwartz called for a K9  
15 unit. At approximately 12:47 a.m., Officer Merkl and K9 Bear arrived. Bear  
16 performed an exterior sniff of Defendant's vehicle and alerted twice on the vehicle,  
17 indicating the odor of controlled substances was present on the side of the driver's  
18 door. Gullet told Detective Grant and Officer Merkl that he thought Bear alerted  
19 because he had methamphetamine on his hands from a recent use, but that were no  
20 narcotics in the car.

21 Gullet was then transported to the Franklin County Jail and booked on his  
22 outstanding warrant. KPD officers then towed the Saturn Ion in anticipation of  
23 obtaining a search warrant. A search warrant was later obtained, and Detectives  
24 executed a search on the car. Detectives found a small grey backpack in the trunk  
25 of the Ion, containing multiple controlled substances and drug paraphernalia. In  
26 addition, Detectives found two safes that were unlocked using a key on a keyring  
27 taken from Gullett upon his arrest. Officers opened one safe and found a firearm  
28 inside. The officers terminated the search—as the warrant did not authorize a

1 search for firearms—and resumed the search after securing an amended warrant.  
2 Officers seized the firearm and the narcotics, and these items formed the basis of  
3 the Indictment here.

#### 4 **Discussion**

5 Defendant’s argument has two prongs. First, Defendant argues that officers  
6 lacked reasonable suspicion based on the anonymous tips to stop him because the  
7 tips were “anonymous, scant on details, and uncorroborated.” ECF No. 26 at 10.  
8 Because the officers did not independently observe anything amounting to  
9 reasonable suspicion, Defendant argues, the items seized from the Saturn Ion are  
10 fruits of an unconstitutional *Terry* stop and must be suppressed. *Id.* Second,  
11 Defendant argues that the evidence should be suppressed because the stop was  
12 unconstitutionally prolonged an unreasonable amount of time to allow for a K9  
13 sniff. *Id.* The Court will consider each argument in turn. For the reasons discussed  
14 below, the Court denies Defendant’s motion to suppress.

##### 15 1. Defendant was not subject to an unconstitutional *Terry* stop

16 The U.S. Constitution prohibits unreasonable searches and seizures by the  
17 Government. U.S. Const., Amend. IV. The Fourth Amendment further provides  
18 that search and arrest warrants must be based on probable cause. *Id.* Evidence that  
19 is found in violation of these rules may be excluded at trial as a means of deterring  
20 wrongful conduct by police. *See Linkletter v. Walker*, 381 U.S. 618, 629 (1965);  
21 *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). These protections extend to arrests as  
22 well as brief investigatory stops of persons or vehicles that fall short of traditional  
23 arrest. *Terry v. Ohio*, 392 U.S. 1, 9 (1968). Under *Terry*, an officer may stop a  
24 person if the officer has reasonable suspicion that the person stopped is (or is about  
25 to be) engaged in criminal activity. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).  
26 In order to be lawful, an investigatory stop must be supported by “specific and  
27 articulable facts which, taken together with rational inferences from those facts,  
28 reasonably warrant” the stop. *Terry*, 367 U.S. at 22.

1 Similarly, an arrest, with or without a warrant, must be based upon probable  
2 cause; however, an arresting officer need not have evidence in hand that would  
3 support conviction at the time of the arrest. *Wong Sun v. United States*, 371 U.S.  
4 471, 479 (1963). Reasonable suspicion that a person is an individual with an  
5 outstanding arrest warrant justifies stopping a person to execute the warrant. *See*  
6 *United States v. Leon*, 468 U.S. 897, 920 n. 21 (1984). Indeed, the very fact that an  
7 arrest warrant exists authorizes police to execute the arrest of someone the officer  
8 reasonably suspects to be the subject of the warrant. *See e.g., Sharp v. County of*  
9 *Orange*, 871 F.3d 901, 917-18 (9th Cir. 2017) (citing *Payton v. New York*, 445  
10 U.S. 573, 602-03 (1980)); *Hart v. Parks*, 450 F.3d 1059, 1069 (9th Cir. 2006)  
11 (finding that police who discovered an outstanding warrant for the plaintiff before  
12 arresting the plaintiff was not grounds to assert a wrongful arrest claim).  
13 Furthermore, the standard for probable cause to arrest is low; indeed, the Ninth  
14 Circuit has recognized that police may rely on hearsay and other evidence that  
15 would not be admissible in a court to determine probable cause. *Hart*, 450 F.3d at  
16 1066. Rather, so long as the arrest was based on a facially valid warrant, the arrest  
17 is generally presumed to be constitutional. *Baker v. McCollan*, 443 U.S. 137, 143-  
18 44 (1979).

19 Defendant argues that the officers' interactions with Defendant are best  
20 characterized as a *Terry* stop. ECF No. 26 at 11. Defendant argues that, although  
21 Defendant had an active warrant for his arrest and the officers were aware of the  
22 warrant prior to stopping him, the officers' only authority to search Defendant's  
23 vehicle was a *Terry* stop, and that the only basis the officers had to stop Defendant  
24 was based on the anonymous tips the CAT received. *Id.* In response, the  
25 Government argues that Defendant has conflated the requirements of an  
26 investigatory *Terry* stop with the requirements of the lawful execution of a valid  
27 arrest warrant. ECF No. 34 at 2.

1 Whether the stop and arrest of Defendant here required some level of  
2 articulable suspicion or probable cause hinges on whether Defendant was stopped  
3 for the purposes of a *Terry* investigative stop or the execution of a valid search  
4 warrant. The Court concludes that Defendant was not stopped for the purposes of a  
5 *Terry* investigative stop. Rather than stopping Defendant because they suspected  
6 he was engaged in or was about to engage in criminal activity, the KPD officers  
7 here stopped Defendant to execute a validly issued arrest warrant. *See* ECF No. 26,  
8 Ex. B at 2. Although Detectives Grant and Schwartz had knowledge of anonymous  
9 tips submitted to the CAT regarding Defendant's alleged drug dealing and where  
10 he might have been, the arrest warrant provided an independent and adequate basis  
11 to stop him. *See e.g., Leon*, 468 U.S. at 920 n. 21 ("A warrant is a judicial mandate  
12 to an officer to conduct a search or make an arrest, and the officer has a sworn duty  
13 to carry out its provisions.").

14 Thus, because Defendant was stopped to execute a valid arrest warrant—and  
15 not to search for ongoing criminal activity—articulable suspicion is not required.  
16 Instead, Detectives Grant and Schwartz need only have reasonably suspected that  
17 Defendant was in fact the subject of the warrant. *See Sharp*, 871 F.3d at 917-18.  
18 Detectives Grant and Schwartz both testified that they identified Defendant on  
19 sight on the night he was arrested based on previous contacts they had with him.  
20 Thus, Detectives Grant and Schwartz had reasonable suspicion to arrest Defendant  
21 based on the Franklin County warrant. As Defendant concedes, this arrest was  
22 lawful because it was based on the Franklin County warrant. ECF No. 26 at 19.  
23 Defendant's argument that the evidence seized from the Saturn Ion must be  
24 suppressed because the stop was based on uncorroborated anonymous tips fails.  
25 Although Defendant's recitation of the law governing the use of anonymous tips is  
26 accurate, it is not applicable here and is not grounds for suppressing the evidence  
27 found in the Saturn Ion.



1 Thus, the Court will not suppress the evidence seized from the Saturn Ion on  
2 the basis that officers lacked probable cause to stop Defendant on the night of  
3 February 22, 2019. Because Defendant was stopped for the execution of a valid  
4 arrest warrant—and not as part of an investigatory *Terry* stop—Detectives  
5 Schwartz and Grant did not need probable cause to suspect ongoing criminal  
6 activity. In this context, the anonymous tips received by the CAT are irrelevant to  
7 the Court’s analysis. Accordingly, the Court denies Defendant’s motion to  
8 suppress.

9 2. The Stop Was Not Unconstitutionally Prolonged to Conduct a K9 Sniff

10 In the alternative, Defendant argues that the Court should suppress the  
11 evidence seized from the Saturn Ion on grounds that KPD officers  
12 unconstitutionally prolonged the stop of Defendant for the sole purpose of  
13 conducting a K9 sniff. For the reasons discussed below, the Court is not persuaded  
14 by Defendant’s arguments and accordingly denies the motion to suppress on this  
15 ground as well.

16 The Supreme Court has repeatedly distinguished between a traffic or *Terry*  
17 stop on the one hand—which cannot be prolonged for the sole purpose of  
18 executing a K9 sniff—and being place under arrest pursuant to a valid warrant on  
19 the other. *See id.*; *see also Knowles v. Iowa*, 525 U.S. 113, 117-19 (1998). Under  
20 *Rodriguez v. United States*, police may not extend an otherwise-completed traffic  
21 stop, absent reasonable suspicion, for the sole purpose of conducting a K9 sniff.  
22 135 S. Ct. 1609, 1616 (2015). Thus, in *Rodriguez*, the Supreme Court concluded  
23 that police unconstitutionally prolonged a traffic stop beyond the time it takes to  
24 safely complete the business of a routine traffic stop in order to conduct a K9 sniff.  
25 *Id.* at 1615. *Rodriguez* is, by its own language, specific to the context of traffic  
26 stops and *Terry* stops. *See id.* at 1614 (“a routine traffic stop is more analogous to a  
27 so-called ‘*Terry* stop’ than to a formal arrest.”) (internal quotations omitted); *see*  
28 *also United States v. Landeros*, 913 F.3d 862, 868 (9th Cir. 2019) (applying

1 *Rodriguez* to find police unconstitutionally prolonged a traffic stop to inquire into a  
2 defendant's identity).

3 Defendant argues that the evidence seized from the Saturn Ion should be  
4 suppressed because KPD officers unconstitutionally prolonged the *Terry* stop  
5 solely to conduct a K9 sniff. ECF No. 26 at 20. Defendant argues that the purpose  
6 of the stop—to arrest Defendant—was accomplished as soon as the arrest was  
7 executed and that the stop was unconstitutionally prolonged while waiting for the  
8 K9 unit to arrive. *Id.* However, the Court is not persuaded by this argument. As  
9 discussed above, the Court has already concluded that Defendant was not subject  
10 to a *Terry* stop. Detectives Grant and Schwartz stopped and arrested Defendant  
11 pursuant to a valid arrest warrant; these circumstances fall squarely outside of the  
12 *Rodriguez* line of cases. Thus, Defendant's arguments here fail for the same reason  
13 his arguments regarding probable cause fail—Defendant was not subject to an  
14 investigatory *Terry* stop or a routine traffic stop. Because the circumstances that  
15 led to the K9 sniff were related to the execution of a valid arrest warrant,  
16 *Rodriguez* and its progeny do not apply. Accordingly, the Court denies  
17 Defendant's motion to suppress on grounds that the stop of Defendant was  
18 unconstitutionally prolonged in order to conduct a K9 sniff.

### 19 **Conclusion**

20 For the reasons discussed above, the Court denies Defendant's motion to  
21 suppress. Defendant was not subject to an unconstitutional *Terry* stop; rather,  
22 Defendant was stopped and arrested pursuant to a valid arrest warrant, and his  
23 vehicle searched only after a lawful K9 sniff gave officers probable cause for a  
24 search warrant. Defendant's alternative argument also fails because Defendant was  
25 not subject to a *Terry* stop. Although a *Terry* or traffic stop can be  
26 unconstitutionally prolonged to execute a K9 sniff, the same cannot be said for a  
27 stop to execute a valid arrest warrant.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion to Suppress, ECF No. 26, is **DENIED**.

3 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
4 enter this Order and furnish copies to counsel.

5 **DATED** this 11th day of October 2019.



10 A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

11 Stanley A. Bastian  
12 United States District Judge  
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